

Fair Political Practices Commission

Memorandum

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: John W. Wallace, Senior Commission Counsel
Luisa Menchaca, General Counsel

Subject: March 2002 Work Plan Revisions

Date: February 20, 2002

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the March update to the regulatory work plan for calendar year 2002 reflecting changes during the first quarter.

Currently, there are 26 items on the regulation calendar under four category headings (attached). Section II of the memorandum discusses recommended revisions to the calendar. Proposed revisions will be set forth under these headings, designated with the same item number. Section III contains a summary of work completed in 2001.

II. PROPOSED REVISIONS

A. Campaign/Lobbyist Regulations

- ❖ **Item 1: Advertising Disclosure -- §§ 84501-84510:** These provisions are surviving provisions added by Proposition 208. The purpose of the advertising disclosure rules is to inform voters of the “big money” behind political advertisements. However, interpretive issues exist with respect to whether advertisements for or against a ballot measure are subject to §§ 84502-84504 or § 84506 (governing independent expenditures), or both. Additional issues that may be clarified by regulation: what types of advertisements are subject to the rules; are there exceptions; clarification of the term “cumulative contributions” as defined in § 84502; the treatment of independent expenditure advertisements under § 84506; the specific content of the disclosure; and under what circumstances a disclosure must be amended.

CHANGE: Emergency adoption occurred in January as planned, however, consideration of permanent regulatory language has been moved from March to May 2002. An interested persons’ meeting will be held in April.

¹ See staff memorandum dated November 14, 2001, *Approval of Regulation Calendar for the Year 2002*.

- ❖ **Item 3. Aggregation of Contributions:** Regulation 18428 addresses the disclosure and notification requirements of affiliated entities that participate in the financing of elections. (§ 84211.) Originally, regulation 18428 implemented the Commission's *Kahn* ((1976) 2 FPPC Ops. 151) and *Lumsdon* ((1976) 2 FPPC Ops. 140) opinions requiring a "combination of persons" file one campaign statement. The regulation defined "affiliated entities" as "a person or group of persons whose campaign contributions are directed and controlled by another." The Commission will consider issues raised by regulations 18428, 18215.1, 18225.4, and 18531.1.

CHANGE: Adoption was originally slated for the February meeting, it has been rescheduled to March as a result of the cancellation of the February meeting.

- ❖ **Item 5. Regulation 18452 – CalPERS' Reporting Requirements:** § 84225 requires candidates for the Board of Directors of CalPERS to file certain campaign reporting statements. Regulation 18452, as directed by statute, sets forth the filing schedule and describes the contents of those statements. CalPERS prepared an election schedule that provided for runoff elections under certain circumstances, requiring amendment of regulation 18452, since the regulation makes no provision for the filing of statements required by law during runoff election cycles. In addition, it is unclear where these candidates file.

CHANGE: This item was set for January pre-notice, but has been moved to May due to the heavy calendar during the first quarter. Adoption will be in July.

- ❖ **Item 7. "Independent Expenditure" - Clarify definition:** § 82031 defines "independent expenditure" as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. Currently, no regulation clarifying when an expenditure is or is not made at the behest of a candidate or committee exists.

CHANGE: This item was set for two interested persons' meetings (February and April 2002). The initial interested persons' meeting has been deferred. An interested persons' meeting on this matter is still scheduled for April.

- ❖ **Item 8. Lobbyist Contributions (§ 85702):** Section 85702 prohibits contributions by a lobbyist to elected state officers or candidates for elected state office, if the lobbyist is registered to lobby the government agency of the elected state officer or the agency to which the candidate seeks election.

CHANGE: This item was originally set for late in the calendar year in part due to the pending litigation. It now appears appropriate to consider construction of this statutory ban at an earlier date. Thus, the regulation has been moved to March for emergency adoption, with permanent adoption in June.

- ❖ **Item 9: Lobbyists: Public Utilities Commission (AB 1325):** Modifies the definition of payments to influence legislative/administrative action to include payments for the purpose of influencing a ratemaking or quasi-legislative proceeding before the PUC.

CHANGE: The Interested Persons meeting occurred February 1, 2002, rather than January.

- ❖ **Item 10: Member communications --§§ 85312, 85205:** Scope and definition of terms. Section 85312 provides that certain payments for communications to “members, employees, shareholders, or families of members, employees, or shareholders of an organization” are not contributions or independent expenditures. While the Act currently provides a definition for the term “immediate family” pertaining to conflict of interest and disclosure rules, the term “families” as used in § 85312 may be interpreted more broadly. Similarly, other undefined terms of this section including “member,” “employee,” “shareholder,” “communications,” and “organization” warrant examination and definition by the Commission.

CHANGE: In January 2002, the Commission considered an issue paper on the issues surrounding the statute. This causes the pre-notice and the adoption hearings to be pushed back. Currently, this item is set for March pre-notice and May adoption.

- ❖ **Item 11. One Bank Account/Carry over. (§§85200, 85201 and 85317):** Consideration of amendments to existing Commission regulations concerning the “one-bank-account” rule under the Act. Specific issues include: (1) the continuing viability of the “redesignation” rule applicable to campaign bank accounts established for election and reelection to the same office; and (2) the breadth of section 85317’s “carry over” provision.

CHANGE: This item was considered by the Commission for adoption in December, but was not acted upon based on interpretive questions regarding the carry over provision. This item, with expanded options, is now set for adoption in March.

- ❖ **Item 12. Political Party Definition (§ 85303):** § 85303 provides limitations on contributions “for the purpose of making contributions to candidates for elective state office.” § 85303 also provides a higher contribution limit for political party committees. A regulation setting forth criteria for determining when a contribution falls within this section may be required.

CHANGE: The items involving this issue will be considered first by the Commission in the context of the member communication policy memorandum in January. Further work on this item may be merged with work growing out of the member communication policy memorandum. However, we have tentatively set any necessary regulations for emergency adoption in May to correspond to the Member Communications regulations, and permanent adoption in August.

- ❖ **Item 16. Termination of Committees.** This new item, dealing with new issues that arose in the discussion of the “one-bank-account” rule in item 25, concerns a regulation that requires

termination of campaign committees. The proposed rule would establish definitive timelines for the closure of committees after an election has been held. It also discusses administrative termination and establishes an appeal system from this mandatory closure rule. At the direction of the Commission, this item will be considered for additional pre-notice discussion at the October meeting and adoption in December.

CHANGE: This item was considered by the Commission for adoption in December, but was not acted upon based on issues with terminology used in the regulation. This item was adopted in January.

B. Conflict of Interest

NO CHANGES: At the request of Commissioner Swanson, staff is monitoring the earlier agendas to determine if the conflict of interest items may be considered by the Commission at an earlier date.

C. 2002 Planning Objectives

❖ **Item 2: Conflict of Interest Codes/Statements of Economic Interests--Overview.** Staff from the Technical Assistance Division and Legal Division presented an overview of the Commission's role in reviewing agency conflict of interest codes and its role as the filing officer in January.

CHANGE: Representatives of the California League of Cities asked that the Commission consider placing a regulation on the calendar codifying *In re Siegel* (1977) 3 FPPC Ops. 62. *Siegel* provides a test to apply which may result in members of nonprofit organizations being treated as "public officials" under the Act. The Commission has set this request for further discussion in March.

Staff has met with representatives of the California League of Cities to further consider the proposal. Staff is recommending against adding further conflict-of-interest projects to the calendar this year. Currently, four potentially large projects have been placed on the calendar at the urging of the regulated public. In light of reduced staffing and the time needed to deal with implementation of Proposition 34, it may be in the Commission's best interest to place *Siegel* on next year's calendar.

An interested persons' meeting on amendments to Regulation 18707.4 Public Generally: Appointed Members of Boards and Commissions, which initially was scheduled for February, has been rescheduled for March 7, 2002 at 10:00 a.m.

D. Miscellaneous Items

NO CHANGES: No revisions to note.

III. 2001 REGULATION CALENDAR -- RECAP

In November 2000, the Commission approved a regulatory work plan for calendar year 2001.² The Commission revisited the original work plan in three quarterly work plan revisions (March, June, and September 2000). With the passing of the end of 2001, we can now provide the Commission an update on all the work performed in 2001. Attached please find the workplan calendar for 2001 summarizing the status of regulations.

Attachments

² See staff memo dated October 24, 2000, *Approval of Regulatory Calendar for the Year 2001*.